

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BEN AND EMMA J. GORDON)

Appearances:

For Appellants: William W. Withee, Public Accountant

For Respondent: F. Edward Caine, Senior Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on protests of Ben and Emma J. Gordon to proposed assessments of additional personal income tax in the amount of \$544.56 assessed against each Appellant for the year 1951.

Beginning in 1946, Appellant Ben Gordon (hereafter referred to as Appellant) and Homer F. West were partners in a bookmaking business known as Gordon and West. The bookmaking activities of the business consisted of taking bets on horse races. The Gordon and West partnership information return for 1951 reported income in the amount of \$8,474. The Appellants each filed returns for 1951 and each reported \$2,118.50 in partnership income and \$2,500 in gambling gains. Respondent considered the latter as attributable to Appellant's personal bookmaking activities and concluded that both the partnership and Appellant as an individual were engaged in bookmaking activities during all of 1951. Respondent therefore determined that all deductions for bets lost should be disallowed for the period from May 3, 1951, the effective date of Section 17359 of the Revenue and Taxation Code, to the end of that year. In the absence of records of bets lost, that amount was estimated on the basis that bets were taken at track odds and that, in accordance with the experience of pari-mutuel pools, the reported winnings represented 14 percent of the total bets placed. The remaining 86 percent was regarded as bets lost for the entire year and two-thirds of that amount was apportioned to the period after May 3, 1951.

Section 17359 (now 17297) provided, in substance, that no deductions should be allowed on income from certain defined illegal activities, or from activities that tend to promote or further or are associated or connected with the illegal activities. Bookmaking is one of the illegal activities so defined. (Penal Code, § 337a.)

Appeal of Ben and Emma J. Gordon

The sole question presented is whether the bookmaking activities of the partnership and Appellant ceased prior to May 3, 1951.

Appellant testified that the partnership ceased its bookmaking activities on or about April 15, 1951, and affidavits stating this as a fact and signed by Appellant, Homer F. West and Byron M. Engle, a bookmaker who used the same office, were presented at the hearing of this matter. Further support for concluding that the partnership ceased operations prior to May 3, 1951, is that the net income of the partnership dropped from \$32,602.62 in 1950 to only \$8,474 in 1951. Appellant also testified that the \$2,500 reported in gambling gains in his 1951 return reflected his community share of the \$5,000 he had won through personal bets placed at the pari-mutuel machines at Santa Anita during 1951.

In view of the uncontradicted evidence presented by Appellant, we cannot conclude that the partnership or Appellant as an individual engaged in bookmaking activities on or after May 3, 1951.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on protests of Ben and Emma J. Gordon to proposed assessments of additional personal income tax in the amount of \$544.56 assessed against each appellant for the year 1951 be and the same is hereby reversed.

Done at Sacramento, California, this 7th day of August, 1963, by the State Board of Equalization.

John W. Lynch, Chairman

Paul R. Leake, Member

Geo. H. Reilly, Member

Richard Nevins, Member

 , Member

ATTEST: H. F. Freeman, Secretary